Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	
	)	CC Docket No. 95-185
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	

COMMENTS OF AT&T CORP.

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

AT&T Wireless Services, Inc. ("AT&T") hereby submits its comments on the Notice of Proposed Rulemaking in the above-captioned proceeding.[1] AT&T supports the Commission's tentative conclusion to adopt bill and keep as an interim mechanism to govern interconnection arrangements between local exchange carriers ("LECs") and providers of commercial mobile radio service ("CMRS") until the Commission implements a long-term LEC-to-CMRS interconnection model with prices set at total service long-run incremental cost ("TSLRIC"). The Commission's limited version of bill and keep, however, fails to reflect the nature of CMRS and LEC networks and disregards the mutual benefits inherent in any legitimate mutual compensation regime. The Commission should broaden the scope of its bill and keep proposal to apply to each carrier's entire termination service to reflect the benefits LECs and CMRS providers each receive from interconnecting with the other network.

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[1] Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, Notice of Proposed Rulemaking, CC Docket No. 95-185. FCC No. 95-505 (released Jan. 11, 1996) ("Notice").

I. INTRODUCTION AND SUMMARY

Almost ten years ago, the Commission ordered LECs to interconnect with wireless carriers under a mutual compensation framework. The LECs did not comply. In 1993, after Congress charged the Commission with responsibility for establishing policies to govern LEC-to-CMRS interconnection, the Commission reiterated that mutual compensation is an essential component of any reasonable interconnection standard. The LECs continued to ignore the FCC's requirements, refusing even to consider compensating CMRS providers for terminating landline-originated calls. An efficient and equitable method for achieving these objectives is long past due.

Any compensation policy associated with LEC-to-CMRS interconnection must recognize that LECs derive substantial benefits from interconnection of their networks with the networks of CMRS providers. It should also fairly compensate all carriers for the costs they incur in terminating traffic. For this reason, AT&T believes that the standard for pricing interconnection between CMRS providers and incumbent LECs should be TSLRIC. TSLRIC provides an economically efficient level at which to set the incumbent LECs' interconnection prices, thereby deterring LEC anticompetitive behavior and sending correct entry signals to existing and potential competitors.

Until TSLRIC cost studies are completed and TSLRIC pricing implemented, AT&T strongly endorses the Commission's proposal to adopt a bill and keep mechanism. Bill and keep is the best and most appropriate short-term means for implementing the mutual compensation regime for LEC-to-CMRS interconnection that the Commission ordered nearly a decade ago.

Unfortunately, the interim bill and keep arrangement described in the Notice fails to fully recognize the mutual benefits accruing to both LECs and CMRS providers through interconnection. If, as the Commission proposes, bill and keep were applied only to facilities between the LEC end office and landline end user, CMRS providers could have to pay above-cost access charges for common transport and tandem switching.[2/] To make matters worse, LECs would not have to compensate CMRS providers for tandem-equivalent and transport services on the wireless network. Rather than adopting asymmetric compensation policies that would preserve a "LEC-centric" view of interconnection, the Commission should ensure that its revised rules appropriately reflect the equivalent functions performed by CMRS providers when they terminate LEC-originated calls. The Commission, therefore, should modify its bill and keep proposal and apply it to each carrier's entire termination service.

The Commission seeks comment on how CMRS-LEC interconnection arrangements should be memorialized. Under both the interim bill and keep and long-term TSLRIC plans, the Commission should permit CMRS providers to negotiate interconnection arrangements with LECs and mandate that these agreements be filed with the Commission.[3/] Contractual

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[2/] As described below, assessing access charges on interconnecting CMRS providers is entirely inappropriate. Access charges were not simply intended to compensate LECs for use of their networks. Instead, the charges were applied to the origination and termination of interexchange traffic and set many times above cost, providing enormous premiums to the LECs. The Commission cannot accomplish its objective of making CMRS services available to consumers at competitive prices if CMRS providers are required to pay subsidy-laden interconnection rates to the LECs.

[3/] Under a bill and keep mechanism, contracts would incorporate only terms and conditions, and not rates.

negotiations provide CMRS operators with more flexibility than LEC-initiated tariffs, allowing licensees to respond quickly to changes in customer demand.

In conjunction with its adoption of bill and keep, the Commission should explicitly recognize that its broad jurisdictional reach over CMRS extends to all aspects of LEC-to-CMRS interconnection. Congress's decision to adopt a comprehensive federal regulatory framework for CMRS displaced state regulation of intrastate LEC-to-CMRS interconnection. Recent actions by some states prevent wireless operators from qualifying for the reciprocal compensation and reasonable, non-discriminatory rates granted to competing landline carriers. Such actions defeat the congressional objective of a seamless, national wireless infrastructure. Section 332(c) gives the Commission plenary jurisdiction over LEC-to-CMRS interconnection rates, and the Commission can and should use this authority to develop and enforce equitable mutual compensation policies. Nothing in the Telecommunications Act of 1996 affects the Commission's authority over these matters.

Finally, AT&T believes that interexchange carriers ("IXCs") should not pay access charges to CMRS licensees. The Commission should, however, apply the interconnection policies it develops in this proceeding to all CMRS providers.

II. MUTUAL COMPENSATION ARRANGEMENTS ARE APPROPRIATE BECAUSE LECS AND CMRS PROVIDERS EACH BENEFIT FROM INTERCONNECTING WITH THE OTHER'S NETWORKS

The purpose for reexamining LEC-to-CMRS interconnection policies is to ensure that compensation arrangements "encourage the development of CMRS, especially in competition with LEC-provided wireline service."[4/] To achieve this objective the Commission must

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[4/] Id. at ¶ 2.

jettison outmoded policies and practices and move toward a true form of mutual compensation based on the principle that each originating carrier should pay the terminating carrier's costs. As explained below, adoption of a policy requiring LECs to set interconnection rates for CMRS providers at TSLRIC is the most efficient and reasonable long-term solution. In the interim, however, a fair and expeditious mechanism is needed to promote CMRS growth and rectify continuing LEC disregard of FCC interconnection policies. Accordingly, AT&T endorses the Commission's proposal to establish a short-term bill and keep mechanism for LEC-to-CMRS interconnection.

A. Bill and Keep Will Serve As An Efficient Interim Measure Until Mutual Compensation Based On TSLRIC Is Available

AT&T supports the Commission's tentative conclusion to adopt an interim bill and keep mechanism to govern compensation for LEC-to-CMRS interconnection.[5] Bill and keep can be adopted quickly and inexpensively and will promote competition by eliminating existing problems created by the one-sided compensation terms currently imposed by LECs. Although a greater proportion of CMRS traffic terminates on LEC networks than LEC traffic on wireless networks today, bill and keep is an economically appropriate interim solution because the LECs' costs to terminate CMRS-originated calls is less than the CMRS providers' costs to terminate LEC-originated traffic.

As proposed by the Commission, however, bill and keep would not fully reflect the benefits that all carriers receive from terminating their traffic on another network, and it substantially eliminates the mechanism's administrative simplicity. Bill and keep should

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[5] Id. at ¶ 25.

cover the delivery of all traffic from the point of interconnection with each network to the end user.

1. Existing Compensation Arrangements Are Skewed In Favor of LECs

Interconnection today between LECs and CMRS providers requires two basic components: connecting facilities and call termination facilities.[6/] CMRS providers normally pay a flat rate per month for the use of dedicated facilities connecting their MTSOs to LEC tandems or end offices[7/] and a per-minute fee for the use of call termination facilities.[8/]

Ten years ago the Commission ordered LECs to interconnect with CMRS providers through negotiated arrangements.[9/] As part of this requirement, the Commission compelled

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[6/] Interconnection between LEC and CMRS networks typically occurs in one of three ways. Type 1 interconnection, which is rarely used today, connects the wireless network through the MTSO to the LEC network at an end office, where further switching can occur to other LEC tandems or end offices. Type 2 interconnection enables wireless networks to interconnect as co-carriers. Under Type 2A interconnection, CMRS providers connect to a LEC tandem and generally are charged on a single per-minute basis for the entire arrangement. Type 2B interconnection connects CMRS providers to LEC end offices and does not permit additional switching beyond the terminating office. Type 2B tends to be the least expensive of all three interconnection methods. Exhibit A depicts LEC-to-CMRS interconnection configurations.

[7/] Connecting facilities can take a variety of forms, but they are usually dedicated high-capacity T-1 or DS-1 digital circuits. These facilities employ transmission equipment, multiplexing equipment to allow multiple simultaneous conversations, and repeaters to boost signal strength along some longer routes.

[8/] Call termination facilities determine the destination of calls, assign communications paths, and record billing information. Both LEC and CMRS switches perform these types of functions, but wireless switches also manage spectrum and hand off calls.

[9/] Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 RR 2d 1275, 1283 (1986) ("Policy Statement"), clarified, Declaratory Ruling, 2 FCC Rcd 2910 (1987) ("Interconnection Order"), aff'd on recon., 4 FCC Rcd 2369 (1989).

Ten years ago the Commission ordered LECs to interconnect with CMRS providers through negotiated arrangements.[9] As part of this requirement, the Commission compelled LECs to provide the specific form of interconnection, such as Type 2 or Type 1 interconnection, reasonably requested by a cellular licensee.[10] In 1987, one year later, the Commission explicitly clarified that mutual compensation is imperative to its reasonable interconnection standard.[11] The Commission determined that reciprocal payments were necessary because both LECs and cellular systems must be able to recover their costs of termination.[12] The Commission recognized that mutual compensation reflects the fact that LEC and cellular networks perform analogous switching functions to terminate traffic on other networks.[13]

After enactment of Section 332(c) in 1993,[14] the Commission extended its interconnection requirements for cellular carriers to all CMRS providers.[15] The

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[9] Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 RR 2d 1275, 1283 (1986) ("Policy Statement"), clarified, Declaratory Ruling, 2 FCC Rcd 2910 (1987) ("Interconnection Order"), aff'd on recon., 4 FCC Rcd 2369 (1989).

[10] Policy Statement, 59 RR 2d at 1283.

[11] Interconnection Order, 2 FCC Rcd at 2915; see also 47 C.F.R. § 20.11(b) (requiring mutual compensation for LEC-to-cellular interconnection).

[12] Id.

[13] Id.

[14] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b), 107 Stat. 312 (1993).

[15] See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994) ("CMRS Second Report").

Commission reiterated that mutual compensation is an essential component of any reasonable interconnection standard.[16] The Commission also stressed that the public interest requires LECs to offer the type of interconnection reasonably requested by CMRS providers.[17]

Despite this longstanding policy in favor of mutual compensation, existing arrangements between LECs and CMRS providers reflect the LEC position -- at odds with FCC policy -- that the benefits of interconnection flow in only one direction. LECs charge rates that bear no relationship to their costs and steadfastly refuse to compensate CMRS providers for termination of landline-originated calls. AT&T has found that obtaining payment from LECs is nearly impossible. Indeed, continuous negotiations and administrative litigation with LECs over the past decade have enabled AT&T to enter into only one mutual compensation arrangement with a LEC to date.[18]

Some LECs also have ignored the Commission's requirement that they provide CMRS operators with the type of interconnection desired. While Type 2B interconnection is available in most LEC markets and is recognized as the most cost effective mechanism for many wireless operators, especially in metropolitan areas, a few LECs have generally refused to consider 2B requests. As a result, cellular carriers in these markets have been forced to

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[16] Id.

[17] Id.

[18] In that case, NYNEX initiated a 2.59 cent per minute mutual compensation rate for CMRS interconnection as part of the incentive regulation plan adopted by the New York Public Service Commission ("NYPSC"). See Proceeding On Motion Of The Commission To Investigate Performance-Based Incentive Regulatory Plans For New York Telephony Company - Track II, Order, Opinion 95-13, Case No. 92-C-0665 (Aug. 16, 1995). At the same time, NYNEX refused to comply with AT&T's request to lower the rates to the same level as those offered to new landline entrants.

continue routing traffic through the LEC tandem, using and paying for more LEC facilities than they need.

The inability of CMRS providers to obtain interconnection on reasonable terms was imperative a decade ago and must be addressed immediately today. Further delay would merely reward the LECs for their intransigence. Bill and keep will supply an effective and administratively simple near-term solution to a question that has been asked and answered by the Commission no fewer than three times in ten years. Mutual compensation is an essential component of any reasonable interconnection standard.

2. Bill and Keep Will Provide Incentives For Efficient Interconnection In The Short Term

Bill and keep is appropriate as an interim compensation measure because it reflects the fact that interconnection between CMRS and LEC networks benefits subscribers to both networks and because it provides administrative uniformity and simplicity for both LECs and CMRS providers. It is especially suitable in this instance because LEC and CMRS networks operate in parallel, performing analogous switching and transport functions and potentially competing for the same customers. Indeed, when such "peer" carriers have no competitive advantage that they are attempting to leverage, bill and keep has historically served as an efficient mechanism for the exchange of traffic.[19/]

[19/] See, e.g., Washington Utilities and Transportation Commission v. US West Communications, Inc., Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints In Part, Docket No. UT-941464 at 29 (Oct. 31, 1995) ("Washington Order") (noting that there is a long tradition of the use of bill and keep between noncompeting LECs that exchange traffic within Extended Area Service ("EAS") arrangements).

Bill and keep is economically justified as an interim solution irrespective of any imbalance in traffic between the LEC and CMRS networks because that traffic imbalance is offset by the differences in the costs to each network of terminating traffic that originates on the other.[20] A LEC's interconnection costs are relatively less traffic-sensitive,[21] and CMRS providers do not contribute enough traffic to the LEC network require a perceptible increase in capacity.[22] By contrast, almost all of the plant in a CMRS network is traffic-sensitive. CMRS networks do not employ dedicated loops between their switches and each of their subscribers. To the contrary, wireless systems rely on frequency reuse (both geographically and temporally) to accommodate a large number of subscribers. As traffic on a CMRS system increases, the network's capacity must continually be enhanced through cell sectorization, the addition of new radios in each sector, and the construction of new cell sites (with the consequent redistribution of channels throughout the system). While LEC-originated traffic does not yet constitute the greater portion of all traffic on a CMRS system, it clearly does contribute significantly to the capital and operational costs that are incurred in enhancing the capacity of wireless networks. Furthermore, wireless communications are inherently more complex than landline calling, inasmuch as wireless subscribers must be constantly monitored for call delivery and handoff as the subscriber moves throughout the

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[20] Declaration of Bruce M. Owen ¶ 9 ("Owen Declaration"), attached as Exhibit B.

[21] See, e.g., Washington Order at 30 n.13. For landline-to-landline interconnection a number of states have allowed tariffs to go into effect that contain rates of less than a penny per minute. See Notice ¶ 71 (Ameritech offers reciprocal compensation rates between 0.5 and 0.75 cents per minute and Pacific Bell has reached an agreement with a wireline carrier for a mutual call termination rate of 0.75 cents per minute for local calls). It is reasonable to assume that these rates cover at least the costs LECs incur in terminating calls.

[22] Owen Declaration ¶ 9.

CMRS network. Thus, the traffic-sensitive nature of the CMRS networks and the complexity of wireless communications result in higher costs for CMRS call termination services.

In addition, relative traffic flows can be affected by a number of factors, including pricing and technology changes. Indeed, the balance of traffic between LEC and CMRS networks could shift considerably in the near future, based in part on the compensation policies determined in this proceeding.[23/] The Commission should not allow historical traffic patterns to deter the adoption of pro-competitive policies.

3. To Achieve Its Objectives, Bill and Keep Must Apply to Each Carrier's Entire Termination Service

The hybrid form of bill and keep proposed in the Notice[24/] fails to take into account the parallel, co-carrier relationship between LECs and CMRS providers. In fact, what the Commission proposes is not reciprocity. LECs would be able to bifurcate their "mutual" compensation arrangement into two elements -- one covered by bill and keep and the other by above-cost access charges. This discriminates against CMRS providers, which provide analogous switching and transport services for LECs,[25/] but which would be operating

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[23/] Id. at ¶ 11.

[24/] Notice ¶¶ 62, 65.

[25/] Many wireless systems are designed using multiple switches connected together via dedicated facilities. Each switch serves a group of cell sites within the service area. A call delivered by the LEC network to a wireless subscriber whose phone is registered to the system serving the area will be routed from the appropriate LEC access tandem to the wireless switch with which the tandem is connected. The wireless switch must then query the system's databases to ascertain the subscriber's whereabouts within the system (or within the country if the subscriber is roaming) and route the call to the switch that controls the cell in which the wireless subscriber is actually located. Thus, while wireless systems do not employ a tandem access architecture (because it is not economically efficient to do so), they do perform analogous call routing functions.

entirely under the bill and keep portion of the compensation arrangement. Similarly, the Commission's proposal to have CMRS providers bear 100 percent of the LEC-tariffed charges for the dedicated facilities that carry traffic between the MTSO and LEC tandem disregards the fact that these same trunks are also used to terminate LEC traffic on the CMRS network. Applying bill and keep only to the "last mile" of the LEC network and charging only the CMRS operator for two-way connecting facilities inappropriately perpetuates "LEC-centric" interconnection arrangements.

Moreover, the proposal's failure to apply bill and keep to all LEC termination services from the point of interconnection to the end user would overcompensate LECs. As noted above, LEC incremental switching and transport costs from the final end office to the end user are typically far below the costs incurred by CMRS providers for terminating LEC-originated traffic. This makes it even more inequitable to allow LECs to split their services into two components, one of which has a separate charge, while requiring CMRS providers to apply bill and keep for all services from their wireless switching offices to their subscribers.

The Commission's proposal is inconsistent with bill and keep arrangements implemented in many states. The states that have implemented bill and keep for competitive LEC interconnection have applied it to tandem, as well as end office, and local loop facilities used to terminate traffic.[26/] For example, the California Public Utilities Commission ("CPUC") adopted a comprehensive arrangement, making clear that bill and keep would

[26/] States that have adopted bill and keep at least on an interim basis include California, Washington, Connecticut, Texas, Pennsylvania, and Michigan. See id. at ¶ 60; Washington Order at 37.

apply regardless of whether interconnection occurred at a tandem or end office.[27] The CPUC rejected GTE's proposal to avoid bill and keep when a local call is routed through the tandem because it believed that such an approach would create perverse incentives for carriers to build duplicative facilities to end offices.[28] Likewise, the Washington Utilities and Transportation Commission rejected a request by Teleport Communications Group to implement bill and keep for end office interconnection only and to apply flat-rated port charges to compensate for interconnection at tandem switches.[29]

The Commission's proposal to require CMRS providers to pay LECs for common transport and tandem switching is especially inappropriate because the tariffed prices for these services would be based on access charges. Access charges were not established simply to compensate LECs for the use of their facilities. Rather, access charges were applied to the origination and termination of interexchange traffic in a monopoly LEC environment, and have traditionally and typically been set at many times above actual cost. The Telecommunications Act of 1996[30] and competitive policy require setting all LEC access and interconnection at TSLRIC. Until that is accomplished, the Commission should not exacerbate the problem by extending access charges. It would be inappropriate to extend those charges to LEC-to-CMRS interconnection. Moreover, in contrast to the vertical

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27/ Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, Interim Opinion, R.95-04-043, I.95-04-044 at 31-32 (filed April 26, 1995).

28/ Id.

29/ Washington Order at 32.

30/ Telecommunications Act of 1996, Pub. L. No. 104-104 ("1996 Act").

relationship between IXCs and LECs, CMRS and LEC networks are "peers" that supply similar and potentially competitive services in the same territory.[31]

Congress established a regulatory framework for CMRS that differs fundamentally from traditional LEC/IXC regulation. In enacting Section 332, Congress intended to reduce regulatory burdens on spectrum users and to increase competition in the telecommunications marketplace. Congress recognized that this goal would not be accomplished without reasonable and reciprocal interconnection between LECs and CMRS providers.[32] Imposing access charges on CMRS providers is not consistent with this regulatory policy.

Finally, limiting bill and keep to the "last mile" defeats one of the mechanism's major attributes as a near-term measure: its administrative simplicity.[33] Under its proposal, the Commission would have to determine whether to base tandem switching and common transport charges on the usage-sensitive rates contained in LEC interstate access tariffs and whether "such charges [should] apply to all minutes, or only to traffic during peak periods."[34] LECs and CMRS providers would then have to develop interim billing and accounting systems until a final compensation system is adopted.

If the Commission nevertheless chooses to base the rates for tandem switching, common transport, and entrance facilities on the charges contained in LEC interstate access

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[31] See MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 834, 882-83 (1984) (cellular carriers are not interexchange carriers subject to the imposition of access charges).

[32] H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 261 (1993) ("Budget Act House Report").

[33] Owen Declaration ¶ 8.

[34] Notice ¶ 65.

tariffs, it must avoid importing the subsidies inherent in those rates. As the Commission correctly observes in the Notice, the carrier common line ("CCL") charge represents a contribution from access customers to help reduce end-user subscriber line charges and is not properly imposed on CMRS providers.[35] Similarly, the Commission notes that it is not inclined to permit LECs to charge CMRS providers the above-cost transport interconnection charge ("TIC").[36] While imposing access charges in any form is inappropriate in the context of LEC-to-CMRS interconnection, incorporating the CCL and TIC subsidies would manifestly compound that error.

Instead of the Commission's proposal, all charges for call termination on both the CMRS and LEC networks should be treated on a bill and keep basis during this interim period. In addition, the Commission should require LECs to share with CMRS providers the cost of dedicated facilities used to connect the MTSO and tandem. The Commission should also mandate appropriate safeguards against the discriminatory pricing of LEC-originated calls intended for CMRS networks.[37]

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[35] Id. at ¶ 68.

[36] Id. Applying both the CCL and TIC to CMRS interconnectors would result in interconnection charges that are even higher than the rates currently paid by wireless providers.

[37] The Commission should ensure that LECs do not discriminate against CMRS providers under a bill and keep compensation mechanism by making it more expensive for LEC end users to call certain networks.

4. In the Long Term, The Commission Should Require Reciprocal Compensation For Interconnection Based On TSLRIC

Basic principles of efficient pricing demonstrate that the correct long-term solution to recovering the costs of interconnection is for each provider to base its charges on the costs of terminating traffic. In a competitive marketplace, negotiations are the efficient means of arriving at these costs. Because incumbent LECs continue to possess monopoly control of essential facilities, however, regulatory policies imposing cost standards are necessary. As a long-term arrangement, the Commission should require incumbent LECs to set interconnection rates for CMRS providers at TSLRIC.[38] As the Commission recognizes, TSLRIC provides LECs with an economically efficient level at which to set prices, thereby sending the correct entry and exit signals to existing and potential competitors.[39] TSLRIC emulates the pricing that would occur if the local telephone market were effectively competitive, and it prevents LECs from engaging in a "price squeeze" by charging supra-competitive interconnection rates. Indeed, for those reasons, pricing all LEC interconnection and access at TSLRIC is the appropriate pro-competitive solution.

Because TSLRIC pricing replicates competitive results and encourages the development of actual competition, the Commission should not adopt any of its suggested

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[38] TSLRIC measures the long run incremental cost of providing an entire service, including its service-specific fixed costs. In this regard, it differs from simple long run incremental cost, which does not take fixed costs into account.

[39] Id. at ¶ 47 (acknowledging that "[e]conomists generally agree that prices based on LRIC reflect the true economic cost of a service and give appropriate signals to producers and consumers and ensure efficient entry and utilization of the telecommunications infrastructure"). The difficulties of LRIC-based pricing (id. at ¶ 48) are overcome by the TSLRIC approach.

pricing methodologies that would result in above-TSLRIC interconnection rates. These approaches -- the Ramsey Rule, the use of a specific allocator, the Efficient Component Pricing Rule, and the use of a permissible range of prices[40/] -- are unnecessary to ensure that LECs are able to recover their costs and would create an opportunity for LECs to subvert the ratemaking process. If the telecommunications industry is to continue to grow and converge, rational pricing mechanisms (i.e., TSLRIC) are needed to govern interconnection between networks.[41/] After establishing an interim bill and keep arrangement for LEC-to-CMRS interconnection, the Commission should turn promptly to the task of establishing an appropriate long-term solution.

B. The Commission Should Continue to Permit LECs and CMRS Providers to Enter Into Interconnection Contracts

LEC-to-CMRS interconnection arrangements should continue to be established through contractual negotiation. As the Commission properly suggests, an open process for negotiating interconnection will provide CMRS licensees with a broader range of options than a process constrained by preset interconnection options conceived by the LECs.[42/] The

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[40/] See id. at ¶ 51-54.

[41/] See e.g., 47 U.S.C. § 252(d)(1)(A)(i) (interconnection rates must be based cost); Notice ¶ 77 (acknowledging "that current interstate access charges are problematic, and in the near future [the Commission] intend[s] to initiate a comprehensive proceeding to reform the access charge regime").

[42/] Notice ¶ 89.

rules established by the Commission here should require the LECs to negotiate with CMRS providers in good faith, analogous to the requirements found in the 1996 Act.[43]

The use of contracts permits CMRS providers to seek and obtain interconnection arrangements customized to meet their specific network requirements and business planning needs more easily and efficiently than they could under a tariff regime. The demand for flexibility in structuring interconnection arrangements will only increase as new technology evolves, creating a more diverse population of CMRS providers. The continued use of negotiated interconnection arrangements will allow LECs to respond to these new CMRS providers' specific needs rather than forcing them to conform to interconnection arrangements designed to meet the needs of other providers.

The Commission should also require interconnection agreements to include "most favored nation" clauses. Such provisions would extend the most favorable provisions of all LEC interconnection agreements, whether they be with landline or wireless carriers, generally to all CMRS providers.[44] Such clauses would provide a self-enforcing mechanism to discourage discriminatory arrangements.

Because CMRS providers will be negotiating with monopolists, the Commission should require interconnection contracts to be filed with the agency. Information required

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[43] See 47 U.S.C. § 251(c)(1). Although the 1996 Act does not alter the Commission's responsibilities with respect to LEC-to-CMRS interconnection, the overarching principles and requirements contained in the 1996 Act should serve as a general guide for LEC-to-CMRS interconnection arrangements. See also Interconnection Order, 2 FCC Rcd. at 2912 (existing FCC policies require good faith negotiations between LECs and wireless providers).

[44] As CMRS providers and CLECs begin to operate in the same market, the Commission must ensure that the LECs do not discriminate between these carriers. Cf. CMRS Second Report, 9 FCC Rcd at 1497.

for filing should be limited, however, to that information necessary to provide a reasonable degree of protection to the public.[45] Those requirements should ensure the preservation of the confidentiality of carrier-specific proprietary information, such as network design. The needless public disclosure of such information would compromise the public benefits obtained from allowing the competitive marketplace to operate without unnecessary regulatory intervention.

C. The Commission Should Exercise Its Plenary Jurisdiction Over the Nature and Level of Compensation for LEC-to-CMRS Interconnection

The Commission proposes three possible models for state participation in LEC-to-CMRS interconnection issues. The first would give states freedom to accept or disregard federal guidelines; the second would require states to choose among a broad range of interconnection policy options; and the third would require LECs and CMRS providers to comply with specific federal regulations for both interstate and intrastate traffic.[46]

The Communications Act requires the Commission to adopt the third option. A uniform national policy on LEC-to-CMRS interconnection -- including compensation for interconnection -- is essential to ensure the growth and development of wireless services. In recognition of the interstate nature of wireless services, Congress confirmed the FCC's plenary jurisdiction over interconnection between CMRS providers and other common carriers when it enacted Section 332(c) in 1993. Even apart from Section 332(c), the

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[45] Rate information, of course, should be filed publicly.

[46] Notice ¶¶ 108-110.

inseverable nature of interstate and intrastate wireless transmissions justifies preemption of intrastate interconnection rates.

Nothing in the Telecommunications Act of 1996 disturbs the Commission's plenary authority over these matters. Indeed, the case for federal preemption has been strengthened by the recent decisions of several states that effectively preclude CMRS providers from obtaining compensation from LECs for the termination of LEC-originated calls.

1. Section 332(c) Gives the Commission Plenary Authority Over LEC Rates for Interconnection with CMRS Providers

With the enactment of Section 332(c), Congress deliberately chose a federal regulatory framework to apply to all commercial mobile services. In so doing, it specifically exempted CMRS from the dual federal and state regulatory regime originally established to govern interstate and intrastate services.[47/] The Commission has acknowledged the broad nature of this statutory preemption: "Congress has explicitly amended the Communications Act to preempt state and local rate and entry regulation of commercial mobile radio services without regard to section 2(b)" of the Act.[48/] While Section 2(b) generally deprives the Commission of authority over intrastate communications,[49/] Congress amended that provision to exempt wireless communications services from that general limitation.[50/]

[47/] See 47 U.S.C. §§ 152(a)-(b).

[48/] Budget Act House Report at 260.

[49/] Louisiana Public Service Commission v. FCC, 476 U.S. 355, 374 (1986) ("Louisiana PSC").

[50/] 47 U.S.C. § 152(b) (establishing that the Commission lacks jurisdiction over intrastate communications "[e]xcept as provided in . . . section 332") (emphasis supplied).

But even if Section 2(b) had not been expressly amended, Section 332(c) would still have preemptive effect. Federal preemption occurs when Congress in enacting a federal statute, expresses a clear intention to preempt state law; when it has legislated comprehensively, thus occupying an entire field of regulation; or where there is, implicit in federal law, a barrier to state regulation.[51] Here, such a "clear intention" to preempt state law is manifested in an explicit statutory directive giving the Commission authority over CMRS interconnection rates and the power to order local exchange carriers to interconnect with CMRS providers. In so ordering, Congress sought "[t]o foster the growth and development of mobile services, that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure."[52] Allowing states to regulate intrastate LEC interconnection rates would frustrate Congress's intent to create a seamless federal regulatory framework for CMRS providers. Indeed, if CMRS providers in different states faced disparate rate regimes for intrastate interconnection services, Congress's goals of achieving regulatory parity and uniformity in rate regulation could be thwarted.[53]

As part of the federal regulatory scheme for CMRS, Section 332 gives the Commission plenary jurisdiction to order LEC-to-CMRS interconnection pursuant to the

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[51] Louisiana PSC, 476 U.S. at 368.

[52] Budget Act House Report at 260; cf. H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. 494 (1993) ("Budget Act Conference Report"). ("[T]he Commission, in considering the scope, duration, or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection . . . so that . . . similar services are accorded similar regulatory treatment").

[53] See Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 474 U.S. 409, 422-425 (1985).

provisions of Section 201 of the Act.[54] LEC-to-CMRS interconnection is a federal matter governed by federal law and administered by the Commission.[55] Of necessity, this grant of plenary authority to the Commission over interconnection and CMRS rates carries with it jurisdiction over the rates that LECs charge wireless providers for interconnection. The Commission itself has determined that Section 2(b), as amended, and Section 332(c) establish federal jurisdiction over all CMRS rates, including the rates charged for interconnection.[56] This conclusion flows logically from the statute itself. The 1993 Budget Act amended Section 2(b) to remove the bar on federal regulation of "charges . . . in connection with intrastate communication service . . . by radio."[57] Thus, it is not the case that the FCC's authority over CMRS rates is limited to end user charges.

State regulation of LEC-to-CMRS interconnection rates is fundamentally inconsistent with the statutory goal of a nationwide CMRS market where the rapid deployment of wireless

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[54] 47 U.S.C. § 332(c)(1)(B).

[55] See Budget Act House Report at 261 ("The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network.")

[56] CMRS Second Report, 9 FCC Rcd at 1499-1500, 1506-1507; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, CC Docket No. 94-54, FCC 94-145 at ¶ 143 (released July 1, 1994) ("Equal Access Notice") ("With respect to state jurisdiction over the intrastate rates charged by CMRS providers, the CMRS Second Report determined that the Budget Act preempts any state regulation of CMRS interconnection rates.").

[57] See 47 U.S.C. § 152(b).

technology is encouraged.[58] This is especially true in the case of PCS, which will operate in geographic areas that cross numerous state boundaries.[59] Even if it were practicable to segregate interstate and intrastate traffic, requiring a PCS provider to comply with several state compensation arrangements for a single set of facilities is directly contrary to the purposes of the Section 332. Cellular networks likewise have evolved to a point where "local" systems are now served by centralized signalling hubs that support multi-state regions.[60] With CMRS providers increasingly utilizing such regional architecture, compliance with multiple, inconsistent rate structures for interconnection would be unnecessarily complex and burdensome.

To the extent states permit LECs to charge discriminatory rates or deny mutual compensation treatment to CMRS providers, moreover, state involvement in interconnection issues amounts to prohibited entry regulation.[61] Excessive charges for monopoly interconnection facilities may drive out existing competitors to LEC-affiliated wireless companies or discourage potential new entrants. Likewise, state efforts to retain the

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[58] Cf. Transcontinental Gas Pipe Line, 474 U.S. at 422-425 (state order regulating purchase of natural gas by pipeline provider was preempted by federal statute because it undermined Congress' determination that supply, demand, and price be determined by market forces and disturbed the uniformity of comprehensive federal regulatory scheme).

[59] Indeed, only six of the 49 PCS MTAs in the continental United States are contained solely within one state.

[60] For instance, AT&T's "New York" cellular system now extends into New Jersey and Connecticut.

[61] 47 U.S.C. § 332(c)(3). The Commission has held that entry regulation includes not only direct bans on entry, but also the imposition of terms and conditions that would have the effect of impeding or frustrating the provision of service. See Preemption of State Entry Regulation in the Public Land Mobile Service, Report and Order, 59 RR 2d 1518, 1525 (1986).